

Message Text

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TO AMEMBASSY TOKYO

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REF: (A) TOKYO 13683; (B) STATE 077437

SUBJECT: OKINAWA REVERSION: DEMAURO CLAIM

1. DEPARTMENT CONSIDERS THAT GOJ IS RESPONSIBLE UNDER ARTICLE VI FOR ANY FUNDS DUE DEMAURO FROM EARLIER CONTRACT TO BUILD DAM FOR RYUKU DOMESTIC WATER CORPORATION. THOUGH CONTRACT WAS WITH CORPS OF ENGINEERS (COE) AND RDWC NOT MENTIONED, IT IS CLEAR THAT COE WAS ACTING AS AGENT FOR RDWC, AND HENCE RDWC LIABLE AS PRINCIPAL. 1963 MOU BETWEEN RDWC AND CORPS OF ENGINEERS CONFIRMS THIS RELATION. RDWC COMPENSATED COE FOR PAYMENTS TO DEMAURO, AND MAY EVEN HAVE MADE SOME DIRECT PAYMENTS ON CONTRACT TO DEMAURO. FACT THAT CLAIM AROSE LONG PRIOR TO REVERSION DOES NOT ALTER ARTICLE VI RESPONSIBILITY OF GOJ FOR OBLIGATIONS OF UTILITY OUTSTANDING AT TIME OF REVERSION; TO THE CONTRARY, THIS CLAIM WAS A CLEAR OBLIGATION AT TIME OF REVERSION.

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2. DEMAURO MIGHT ATTEMPT TO TAKE HIS CLAIM TO THE ;S COURT OF CLAIMS. EVEN IF THE COURT OF CLAIMS ACCEPTED HIS CASE AND DEMAURO WON HIS CLAIM, HOWEVER, USG WOULD INSIST ON COMPENSATION FROM GOJ FOR AMOUNT DEMAURO AWARDED. THIS PROCEDURE MIGHT BE MORE EMBARRASSING FOR GOJ, SINCE WE WOULD BE FORMALLY ALLEGING NON-COMPLIANCE WITH TREATY. PROCEDURE MIGHT ALSO NOT PROVE SWIFTEST FOR DEMAURO, BECAUSE OF SOMETIMES LENGTHY (AND PERHAPS COSTLY) COURT OF CLAIMS PROCEEDINGS.

3. DEPARTMENT UNDERSTANDS THAT GOJ HAS SOME DIFFICULTY IN ELABORATING PROPER PROCEDURE FOR ASSESSING AND FUNDING DEMAURO CLAIM. WE CANNOT, OF COURSE, RESOLVE THE INTERNAL JAPANESE QUESTION OF WHERE THE FUNDS TO COMPENSATE DEMAURO SHOULD COME FROM. UNDER TREATY, IT IS GOJ THAT IT OBLIGATED, BUT WE WOULD POINT OUT THAT THE GOJ, OF COURSE, MAY EXERCISE ITS RECOURSE TO PREFECTURE OR UTILITY SINCE UTILITY ITSELF WAS THE DIRECT BENEFICIARY OF THE EARLIER UNDER-PAYMENT TO DEMAURO. (IF USG HAD PAID THE CLAIM PRE-REVERSION, MONEY WOULD HAVE COME FROM UTILITY FUNDING.) AS TO PROCESSING OF CLAIMS, CORPS OF ENGINEERS HAS REITERATED POSITION AND OFFER STATED REF B. SINCE COE HAS GREATEST FAMILIARITY WITH CONTRACT TERMS AND FACTS OF CASE, THIS STRIKES US AS PROCEDURE MOST LIKELY TO BRING FAIR AND QUICK RESULT.

4. IF GOJ IS NOT INTERESTED IN ABOVE SOLUTION AS ELABORATED REF B, WE HAVE NO OBJECTION TO ANY PROCEDURE GOJ MAY WISH TO ESTABLISH, SO LONG AS AN EQUITABLE RESULT CAN BE REACHED AS SOON AS POSSIBLE. WE BELIEVE, HOWEVER, THAT MATSUURA'S SUGGESTION OF DEMAURO ACTION IN GOJ COURTS WOULD DRAG OUT PROCESSING OF CLAIM, AND DO NOT BELIEVE GOJ SHOULD BE ALLOWED TO AVOID ITS RESPONSIBILITIES BY THIS MEANS. AS NOTED PARA 5, REF B, WE ALSO BELIEVE DEMAURO'S CLAIM TO SOME COMPENSATION IS VALID, AND WE WOULD HAVE GREAT DIFFICULTY ACCEPTING A CONTRARY FINDING IN ANY JAPANESE PROCEEDING.

5. RECOMMEND THAT EMBASSY DRAW ON ABOVE POINTS TO MAKE LIMITED OFFICIAL USE

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STRONG REPRESENTATION TO GOJ ON BEHALF OF DEMAURO. USG HAS ESTABLISHED CLAIMS PROCEDURE AND PROCESSED CLAIMS OF JAPANESE PURSUANT TO ARTICLE IV. ACKNOWLEDGING THAT PART OF THE DELAY IS DUE TO RECENT USG TARDINESS, WE NEVERTHELESS BELIEVE GOJ IS LONG OVERDUE IN MAKING SOME ARRANGEMENTS FOR DEMAURO. WE BELIEVE OFFER OF CORPS OF ENGINEERS IN REF B AND PARA 3 ABOVE SHOULD BE REPEATED TO GOJ, WITH STRONG REQUEST FOR A QUICK GOJ RESPONSE. IF RESPONSE

POSITIVE, EMBASSY WILL NEED TO ARRANGE PROPER GOJ AUTHORIZATION FOR CORPS OF ENGINEERS TO ACT; IF NEGATIVE, WE WILL EXPECT GOJ TO MOVE SWIFTLY TO ESTABLISH OTHER MEANS OF PROCESSING DEMAURO CLAIM. KISSINGER

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